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September 26, 2023

**BY ECF**

Honorable Ona T. Wang  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**MEMO ENDORSED.**

Re: David Maxwell v. State of New York, et al.,  
23 Civ. 3563 (JPC) (OTW)

Your Honor:

I am an Assistant Corporation Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York and the attorney assigned to the above-referenced matter. I write on behalf of the Office of the Corporation Counsel (hereinafter “this Office”) as an interested party to respectfully note that: (1) all defendants have not yet been served; and (2) a summons has not been issued as to defendant the City of New York (the “City”). As such, this Office respectfully requests an adjournment of the October 11, 2023 Initial Conference and all corresponding deadlines. (See ECF No. 17). This is this Office’s first such request. Plaintiff consents to this request.

By way of background, plaintiff brings this action pursuant to 42 U.S.C. § 1983 alleging, *inter alia*, claims of false arrest against New York City Police Department (“NYPD”) Officer Vucetovic and NYPD Sergeant Moth, and a denial of medical treatment claim against New York City Fire Department (“FDNY”) Emergency Medical Service (“EMS”) worker Gerald Carr related to plaintiff’s arrest at his apartment on May 4, 2021. (See ECF No. 10).

On July 18, 2023, plaintiff filed the Amended Complaint. (Id.) On August 14, 2023, this Office filed a letter noting that defendants Vucetovic and Roth had not been properly served with the Amended Complaint and respectfully requested that the Court *sua sponte* grant an enlargement of time for defendants Vucetovic and Moth to respond to the Amended Complaint. (See ECF No. 13). On that same day, District Court Judge John P. Cronan filed a memo endorsement which, *inter alia*, granted this Office’s request and directed the Clerk of the Court to “issue summonses and deliver to the Marshals all the paperwork necessary for the Marshals Service to effect service of the Amended Complaint upon [Defendants Sgt. Howard Moth, Officer Fatmir Vucetovic, and

Gerald Carr].” (See ECF No. 14). On August 15, 2023, summonses were issued as to the above-named individual defendants. (See ECF No. 15). Upon information and belief, these individual defendants have not yet been served. Further, the City has not been issued a summons pursuant to F.R.C.P. 4(c)(1).

On August 17, 2023, this case was referred to Your Honor for general pretrial and dispositive motion practice. (See ECF No. 16). On that same day, the Court, *inter alia*, scheduled an Initial Pretrial Conference for October 11, 2023 and ordered the parties to file a Proposed Case Management plan by October 4, 2023. (*Id.*)

However, at this time, a Case Management Plan and Initial Conference is premature because no defendant, including the City, has been served. This Office has appeared in this case as an interested party only. Once service is effected on the individual defendants, the requested adjournment will also allow this Office time to conduct an inquiry to determine whether it will represent them. See General Municipal Law § 50(k); *Mercurio v. City of New York, et al.*, 758 F.2d 862, 864-65 (2d Cir. 1985); *Williams v. City of New York, et al.*, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law).

Accordingly, in order to allow time (1) for the individual defendants to be served and for the City to be issued a summons and served, and (2) for this Office to assess and assume representation of the individual defendants, this Office respectfully requests an adjournment of the October 11, 2023 conference and corresponding deadlines, including filing the Proposed Case Management Plan.

Thank you for your time and consideration.

Respectfully submitted,

/s/ Bailey Forcier

Bailey Forcier

*Assistant Corporation Counsel*

cc: **Via Electronic Mail**  
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Application **GRANTED**. The Initial Case Management Conference currently scheduled for October 11, 2023 is **ADJOURNED to Tuesday, November 14, 2023 at 10:00 a.m.**

**SO ORDERED.**



Ona T. Wang  
U.S.M.J.

9/27/23